


  
**FEDERAL REGISTER**
  
 VOLUME 3 1934 NUMBER 254
  
 OF THE UNITED STATES

*Washington, Saturday, December 31, 1938*

**The President**

**EXECUTIVE ORDER**

**TRANSFER OF LANDS FROM THE COCHETOPA NATIONAL FOREST TO THE RIO GRANDE NATIONAL FOREST**

**COLORADO**

By virtue of and pursuant to the authority vested in me by the act of June 4, 1897, 30 Stat. 11, 36 (U. S. C., title 16, sec. 473), and upon the recommendation of the Secretary of Agriculture, it is ordered that the following-described area be transferred from the Cochetopa National Forest to the Rio Grande National Forest:

**NEW MEXICO PRINCIPAL MERIDIAN**

All the area in Saguache County, Colorado, in Townships 42 North, Ranges 4 and 5 East; Townships 43 North, Ranges 4, 5, and 6 East, inclusive, and Townships 44 North, Ranges 4 and 5 East, lying within the boundaries of the Cochetopa National Forest and south and east of the divide between the Saguache Creek drainage and the Carnero Creek drainage, from Bowers Peak northeasterly, over Lookout Mountain, and Lake Mountain to the boundary line of the Cochetopa National Forest on the eastern section line of Section 3, Township 43 North, Range 6 East.

It is not intended by this order to give any publicly-owned lands a national-forest status which do not now have such a status, or to remove any publicly-owned lands from a national-forest status.

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,  
December 29th, 1938.

[No. 8030]

[F. R. Doc. 38-3928; Filed, December 30, 1938; 10:00 a. m.]

**Rules, Regulations, Orders**

**TITLE 7—AGRICULTURE**

**AGRICULTURAL ADJUSTMENT ADMINISTRATION**

**PART 723—RESULTS OF RICE REFERENDUM, 1939-40 MARKETING YEAR**

I, H. A. Wallace, Secretary of Agriculture, acting under and pursuant to, and

by virtue of, the authority vested in me by Section 355 of the Agricultural Adjustment Act of 1938, as amended, do hereby make the following proclamation:

**SECTION 723.3 Results of rice referendum.** In the referendum of producers who would be subject to the national marketing quota for rice for the marketing year beginning August 1, 1939, conducted by the Secretary of Agriculture on the 10th day of December, 1938, to determine whether such producers were in favor of or opposed to such quota, the total number of votes cast was 7,890; and of the total number of votes so cast 3,806 votes, or 48.2 percent, were in favor of, and 4,084 votes, or 51.8 percent, were opposed to, such marketing quota. The national marketing quota for rice for the marketing year beginning August 1, 1939, proclaimed by the Secretary of Agriculture on the 26th day of November, 1938, shall not, therefore, become effective. (Sec. 355, 52 Stat. 62)

Done at Washington, D. C., this 30th day of December, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 38-3934; Filed, December 30, 1938; 12:51 p. m.]

**PART 724—RESULTS OF BURLEY TOBACCO REFERENDUM**

I, H. A. Wallace, Secretary of Agriculture, acting under and pursuant to, and by virtue of, the authority vested in me by Sec. 312 of the Agricultural Adjustment Act of 1938, as amended, do hereby make the following proclamation:

**SECTION 724.103 Results of Burley tobacco referendum.** In the referendum of farmers who were engaged in production of the 1938 crop of Burley tobacco, conducted by the Secretary of Agriculture on the 17th day of December, 1938, to determine whether such farmers were in favor

\*3 F. R. 2784 DL.

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of or opposed to the national marketing quota for Burley tobacco for the marketing year beginning October 1, 1939, the total number of votes cast was 217,339; and of the total number of votes so cast 129,123 votes, or 59.4 percent, were in favor of, and 88,216 votes, or 40.6 percent, were opposed to, such marketing quota. The national marketing quota for Burley tobacco for the marketing year beginning October 1, 1939, proclaimed by the Secretary of Agriculture on the 29th day of November, 1938,<sup>1</sup> is, therefore, terminated. (Sec. 312, 52 Stat. 46)

Done at Washington, D. C., this 30th day of December, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 38-3936; Filed, December 30, 1938; 12:51 p. m.]

#### PART 726—RESULTS OF FIRE-CURED AND DARK AIR-CURED TOBACCO REFERENDUM

I, H. A. Wallace, Secretary of Agriculture, acting under and pursuant to, and by virtue of, the authority vested in me by Sec. 312 of the Agricultural Adjustment Act of 1938, as amended, do hereby make the following proclamation:

SECTION 726.103 *Results of fire-cured and dark air-cured referendum.* In the referendum of farmers who were engaged in production of the 1938 crop of fire-cured and dark air-cured tobacco, conducted by the Secretary of Agriculture on the 17th day of December, 1938, to determine whether such farmers were in favor of or opposed to the national

marketing quota for fire-cured and dark air-cured tobacco for the marketing year beginning October 1, 1939, the total number of votes cast was 43,736; and of the total number of votes so cast 26,419 votes, or 60.4 percent, were in favor of, and 17,317, or 39.6 percent, were opposed to, such marketing quota. The national marketing quota for fire-cured and dark air-cured tobacco for the marketing year beginning October 1, 1939, proclaimed by the Secretary of Agriculture on the 29th day of November, 1938,<sup>1</sup> is, therefore, terminated. (Sec. 312, 52 Stat. 46)

Done at Washington, D. C., this 30th day of December, 1938. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 38-3935; Filed, December 30, 1938; 12:51 p. m.]

#### SUGAR DIVISION

[G. S. Q. R. Series 6, No. 2]

##### PART 821—SUGAR QUOTAS

#### SUGAR CONSUMPTION REQUIREMENTS FOR THE CALENDAR YEAR 1939 FOR THE TERRITORY OF HAWAII AND FOR PUERTO RICO

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1937, approved September 1, 1937, I, H. A. Wallace, Secretary of Agriculture, in order to carry out the powers vested in me by the said act, do hereby make, prescribe, publish, and give public notice of these regulations, which shall have the force and effect of law and shall remain in force and effect until amended or superseded by orders or regulations hereafter made by the Secretary of Agriculture.

SEC. 821.31 *Consumption requirements and quotas.*—(a) *Original consumption requirements.* It is hereby determined, pursuant to Section 203 of the Sugar Act of 1937 (hereinafter referred to as the "act"), that the amount of sugar needed to meet the requirements of consumers in the Territory of Hawaii for the calendar year 1939 is 29,412 short tons of sugar, raw value, and that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1939 is 70,812 short tons of sugar, raw value.

(b) *Original local consumption quotas.* There are hereby established, pursuant to section 203 of the said act, for local consumption in the Territory of Hawaii and in Puerto Rico, for the calendar year 1939, the following quotas:

Area:	Quotas in terms of short tons, raw value
Hawaii.....	29,412
Puerto Rico.....	70,812

(Sec. 203, 50 Stat. 905; 7 U. S. C., Sup. III, 1113)

<sup>1</sup> 3 F. R. 2801 DI.

SEC. 821.32 *Restrictions on marketing.* For the calendar year 1939, all persons are hereby forbidden, pursuant to section 209 of the said act, from marketing in the Territory of Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the year has been filled. (Sec. 209, 50 Stat. 908; 7 U. S. C., Sup. III, 1119)

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the District of Columbia, city of Washington, this 29th day of December 1938.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 38-3937; Filed, December 30, 1938; 12:52 p. m.]

#### TITLE 16—COMMERCIAL PRACTICES

##### FEDERAL TRADE COMMISSION

##### *United States of America—Before Federal Trade Commission*

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 30th day of December, A. D. 1938.

Commissioners: Garland S. Ferguson, Chairman; Charles H. March, Ewin L. Davis, William A. Ayres, Robert E. Freer.

[File No. 21-335]

#### IN THE MATTER OF TRADE PRACTICE RULES FOR THE BABY CHICK INDUSTRY

##### PROMULGATION

Due proceedings having been held<sup>1</sup> under the trade practice conference procedure in pursuance of the Act of Congress approved September 28, 1914, as amended (Federal Trade Commission Act), and other provisions of law administered by the Commission;

It is now ordered, That the trade practice rules of Group I and Group II, as hereinafter set forth, which have been approved and received, respectively, by the Commission in this proceeding, be promulgated as of December 31, 1938.

##### STATEMENT BY THE COMMISSION

Trade practice rules for the Baby Chick Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The general purpose of the rules is to foster and promote fair competitive conditions and the protection of the purchasing and consuming public, and to this end to eliminate and prevent misrepresentation, deceptive concealment, and other unfair methods of competition or unfair or deceptive acts or practices.

In the course of the proceedings an industry's conference was held in St. Paul, Minnesota, under the Commis-

<sup>1</sup> 3 F. R. 2293 DI.

sion's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions or objections as they desired and to be heard in respect to the proposed rules. At the public hearing held in Washington, all matters submitted orally or in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

The rules for the Baby Chick Industry herein promulgated supersede and replace prior rules for the industry as published by the Federal Trade Commission on November 25, 1933.

These rules promulgated by the Commission are designed to foster and promote fair competitive conditions in the interest of the industry and the public. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

#### Group I

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress, as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce.

**Definition.**—The term "baby chicks" as used in these rules shall be understood as including turkey poults, goslings, ducklings, or other live young poultry to be raised for breeding purposes or for the production of eggs and other poultry products.

**RULE 1. Misrepresentation of products.**—It is an unfair trade practice, in the course of or in connection with the offering for sale, sale or distribution of baby chicks, to make or publish, or cause to be made or published, directly or indirectly, any false, misleading or deceptive statement or representation (whether in the form of advertisement, guarantee, warranty, testimonial, endorsement, depiction, illustration, or other form of representation, however disseminated or published):

(a) Concerning the grade, quality, quantity, breed, pedigree, type, sex, sexing, quick maturity, uniform development, character, nature, origin, weight, color or size of such baby chicks; or

(b) Concerning the production, sale or distribution of any such baby chicks; or

(c) Concerning the purported supervision, endorsement or approval of any poultry breeding, hatching or other operation by Federal, State or other authority; or

(d) Concerning any other matter in relation to such baby chicks.

**RULE 2. Deceptive concealment of material facts.**—In advertising, offering for sale or selling baby chicks, it is an unfair trade practice for any member of the industry to conceal or fail or refuse to disclose any material facts for the purpose or with the effect of thereby misleading or deceiving purchasers, as for example:

(a) Filling baby chick orders with cockerels which have been obtained from sexed chicks or from other sources without having disclosed to the purchaser at the time of sale the fact that the baby chicks delivered are cockerels;

(b) Adding surplus cockerel chicks to so-called "straight-run" chicks and offering for sale, selling or delivering same to customers without informing the respective purchasers of the fact that such surplus or added cockerels have been included and without obtaining such purchasers' consent thereto.

**NOTE.**—The above examples are but a few illustrations of the scope of Rule 2.

**RULE 3. (a) Misuse of words "Guaranteed to Live", etc.; (b) Use of deceptive guarantees as to livability of baby chicks, etc.**—(a) It is an unfair trade practice to advertise, guarantee, describe or otherwise represent that baby chicks sold or offered for sale are "guaranteed to live", or to make similar statements or representations, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the erroneous belief that the said baby chicks possess extraordinary stamina or other qualities which prevent disease or death.

(b) It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading or deceptive statement, guarantee, warranty or other representation concerning the livability, health or stamina of baby chicks sold or offered for sale.

**RULE 4. Misrepresentation as to yields of eggs.**—It is an unfair trade practice to advertise, guarantee, describe or otherwise represent, directly or indirectly, that very high yields of eggs are received from all flocks of a particular seller or producer when such is not the fact, or when such statement or representation is true only as to a small percentage or proportion of his flocks.

**RULE 5.—Misrepresentation as to blood testing, etc.**—(a) It is an unfair trade

practice to advertise, guarantee, describe or otherwise represent, directly or indirectly, that all baby chicks or other poultry sold or offered for sale have been blood tested, pullorum tested, vaccinated, inoculated, or otherwise treated for any disease when such is not the fact, or when only a portion of the flocks supplying the eggs have been so treated or tested during the current season.

(b) It is an unfair trade practice to use any disease control term such as "pullorum tested", "blood tested", or the like, in advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that officially approved methods have been used in making these tests when such is not the fact.

**RULE 6. Deceptive substitution of inferior chicks for those ordered.**—It is an unfair trade practice to advertise, guarantee, describe or otherwise represent that the flocks of a particular seller or producer possess certain good qualities, such as ability to resist disease or to produce high yields of eggs, or the like, and then upon receipt of customers' orders for baby chicks from the flocks advertised, filling same from flocks of an inferior quality, without informing the purchasers of such substitution.

**RULE 7. Deceptive sale of chicks at purported bargain prices.**—It is an unfair trade practice to sell or offer to sell baby chicks of poor grade or quality at so-called "bargain prices" or at any other prices, through advertisements or otherwise, from a farm or hatchery advertised or bearing a reputation for high grade production, without informing purchasers or prospective purchasers as to the poor grade or quality of such chicks and with the tendency and capacity or effect of thereby misleading or deceiving them into the erroneous belief that they are receiving a bargain when such is not the fact.

**RULE 8. Misrepresentation as to egg production qualities of poultry.**—In the case of a producer of baby chicks mating with his flocks a limited number of males having a record for transmitting high egg production qualities while mating therewith other males having no such record, it is an unfair trade practice to offer baby chicks for sale from his flocks, through advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers into the belief that all of such chicks possess the same high egg production qualities as the said males of high pedigree, or that such flocks have been mated exclusively with males having a record for transmitting high egg production qualities, when such is not the fact.

**RULE 9. Deceptive use of "Leaders".**—It is an unfair trade practice to offer for sale, advertise or otherwise represent baby chicks as being of a certain high grade or quality, offered at claimed "bar-

gain prices" and under circumstances which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that an adequate supply of such chicks is available to purchasers at such prices, or that all chicks so offered for sale or sold under such representations and conditions are of the same high grade or quality, when such is not true in fact.

**RULE 10. Misuse of words "Hatchery", "Chickery", "Chick Nursery", "Farm", "Poultry Farm", "Breeding Farm", "Incubators", etc.**—(a) It is an unfair trade practice for any person, partnership or corporation by trade or corporate name, through advertising or otherwise, to hold himself or itself out as owning or operating a hatchery, chickery, chick nursery, farm, poultry farm, breeding farm, incubators or the like, when such is not the fact.

(b) In the sale or offering for sale of baby chicks, through advertising or otherwise, it is an unfair trade practice for any person, partnership or corporation to represent that such chicks have been produced by the said person, partnership or corporation, or have been produced under certain conditions, when such is not the fact.

**RULE 11. Deceptive guarantees or representations as to percentage of chicks alive at buyer's destination.**—It is an unfair trade practice to make false, misleading or deceptive guarantees, warranties, or other representations to the effect that a certain percentage of the chicks shipped will be alive at buyer's destination, and then fail to adjust losses pursuant to representations made, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

**RULE 12. Misrepresenting chicks sold at auction, through shipment to fictitious consignees, through agents, salesmen or dealers, etc.**—It is an unfair trade practice to cause baby chicks to be sold under deceptive or misleading conditions, at auction sales, through shipment to fictitious consignees, or through agents, salesmen, dealers, or otherwise, whether by means of false, misleading or deceptive statements or representations or by means of deceptive concealment of material facts.

**RULE 13. Deceptive testimonials.**—It is an unfair trade practice for any member of the industry to publish or use misleading or deceptive testimonials regarding exceptional results alleged to have been obtained by buyers of his chicks, which testimonials are so worded as to have the tendency and capacity or effect of inducing purchasers or prospective purchasers to believe that all of such member's chicks may be expected to produce similar results for all buyers when such is not the fact.

**RULE 14. Misuse of word "Free".**—The use of the word "free", or the equivalent

thereof, where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

**RULE 15. Misrepresenting chicks as from stock entered in egg-laying contests or poultry shows, etc.**—It is an unfair trade practice to advertise, guarantee, describe or otherwise represent that baby chicks sold or offered for sale are from, or are closely related to, stock entered in egg-laying contests or poultry shows, or the like, when such is not the fact.

**RULE 16. Misuse of terms "trapnest", "trapped", etc.**—It is an unfair trade practice to use the terms "trapnest", "trapped", or the like, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that all baby chicks sold or offered for sale are hatched from eggs produced by hens that are actually being trapped, or have been trapped for at least one year, when such is not the fact.

**RULE 17. Deceptive depictions.**—It is an unfair trade practice to use photographs, cuts, engravings, illustrations, or pictorial or other depictions or devices, in catalogues, sales literature or advertisements, or otherwise, in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the size, importance or location of the premises occupied by a member of the industry, as to such member's equipment, as to his breeding flocks or poultry products, or as to any phase of his poultry hatching, breeding, or other operations.

**RULE 18. Deceptive representations as to earnings, etc.**—It is an unfair trade practice to make false, misleading or deceptive statements or representations regarding opportunities for making money or actual or probable earnings of agents or dealers handling hatching eggs, baby chicks or other poultry, or of purchasers raising baby chicks or other poultry, which products are being offered for sale or sold by a member of the industry.

**RULE 19. Deception as to transportation charges.**—(a) It is an unfair trade practice to sell or offer to sell baby chicks, through advertising or otherwise, in such manner as to mislead or deceive purchasers or prospective purchasers into the belief that the prices quoted for such chicks are the prepaid or delivered prices when such is not the fact.

(b) It is an unfair trade practice, by failing correctly to inform customers or by other deception, to cause purchasers to believe that transportation costs will not be charged against them in C. O. D. charges or otherwise, when such is not true in fact.

**RULE 20. Publishing or circulating of false or misleading price quotations, price lists, etc.**—The publishing or circulating by any member of the industry of false or

misleading price quotations, price lists, terms or conditions of sale, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

**RULE 21. Misrepresenting offer as "special".**—It is an unfair trade practice to represent an offer as "special" when it is in fact a "regular" offer.

**RULE 22. Fictitious prices.**—Offering baby chicks for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such chicks for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

**RULE 23. Misrepresenting offer as limited to time, etc.**—It is an unfair trade practice to represent an offer to be limited as to time or otherwise when such is not the fact.

**RULE 24. Bogus independents.**—It is an unfair trade practice to sell or offer to sell industry products through a pretended independent concern in such manner as to mislead or deceive purchasers or prospective purchasers into the erroneous belief that such concern is independent and in competition with that member of the industry owning or controlling such concern.

**RULE 25. Schemes involving lottery, misrepresentation or fraud.**—The offering or giving of prizes, premiums or gifts in connection with the sale of industry products or as an inducement thereto by any scheme which involves lottery, misrepresentation or fraud, is an unfair trade practice.

**RULE 26. Misuse of word "guarantee", etc.**—It is an unfair trade practice to use the word "guarantee", or any other word, expression or representation of similar import, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

**RULE 27. Defamation of competitors or disparagement of their products.**—The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies or services, is an unfair trade practice.

**RULE 28. "Loss leaders".**—The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

**RULE 29. Inducing breach of contract.**—Inducing or attempting to induce

the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

**RULE 30. Enticing away the employees of competitors.**—Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

**RULE 31. Espionage.**—The securing of information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

**RULE 32. Coercing purchase of one product as a prerequisite to the purchase of other products.**—The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade is an unfair trade practice.

**RULE 33. Consignment selling.**—It is an unfair trade practice for any member of the industry to use the practice of shipping goods to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade; provided, however, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith, and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

**RULE 34. Selling below cost.**—The selling or offering for sale of baby chicks or "started chicks" below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

**RULE 35. (a) Prohibited discriminatory prices, or rebates, refunds, dis-**

**counts, credits, etc., which effect unlawful price discrimination.**—It is an unfair trade practice for any member of the industry engaged in commerce,<sup>1</sup> in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,<sup>2</sup> where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,<sup>3</sup> and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,<sup>4</sup> or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however,*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce<sup>5</sup> from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited brokerage and commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,<sup>6</sup> in the course of such com-

merce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited advertising or promotional allowances, etc.*—It is an unfair trade practice for any member of the industry engaged in commerce<sup>7</sup> to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited discriminatory services or facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce<sup>8</sup> to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal price discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,<sup>9</sup> in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

**RULE 36. Aiding or abetting use of unfair trade practices.**—For any member of the industry knowingly to aid or abet another member, or any other person, firm or corporation, in the use of unfair trade practices, is an unfair trade practice.

#### Group II

The trade practices embraced in Group II rules do not, per se, constitute vio-

<sup>1</sup> Paragraph (a) of Rule 35 shall not be construed as embracing practices prohibited by paragraphs (b), (c) and (d) of this rule.

<sup>2</sup> As herein used, the word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: Provided, That this shall not apply to the Philippine Islands.

lations of law. They are considered by the industry either to be unethical, uneconomical or otherwise objectionable; or to be conducive to sound business methods which the industry desires to encourage and promote. Such rules, when they conform to the above specifications and are not violative of law, will be received by the Commission, but the observance of said rules must depend upon and be accomplished through the cooperation of the members of the industry concerned, exercised in accordance with existing law. Where, however, such practices are used in such manner as to become unfair methods of competition in commerce or a violation of any law over which the Commission has jurisdiction, appropriate proceedings will be instituted by the Commission as in the case of violation of Group I rules.

**RULE A.** The industry condemns the practice of disposing of baby chicks by shipping them to fictitious consignees or without an order or other consent of the consignee, necessitating the sale of such undeliverable shipments at public auction by agents of the common carrier in order to secure payment for transportation costs. Such practice is deemed by the industry to be harmful to the chicks and to facilitate the spread of disease.

**RULE B.** The industry condemns the practice of failing to give proper notice to purchasers of baby chicks of any change in the shipping schedule of an order thereby causing inconvenience and loss to purchasers.

**RULE C.** The industry condemns the practice of failing to ship baby chicks to customers as promptly as has been agreed upon, which practice frequently results in injury to the chicks and inconvenience and loss to customers.

**RULE D.** The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

**RULE E.** Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated and issued by the Federal Trade Commission as of December 31, 1938.

[SEAL]

C. G. DUGANNE,  
Acting Secretary.

[F. R. Doc. 38-3923; Filed, December 30, 1938; 11:30 a. m.]

## Notices

### DEPARTMENT OF LABOR.

#### Wage and Hour Division.

IN THE MATTER OF THE APPLICATION OF HANDLERS OF FLUE-CURED, BURLEY, FIRE-CURED, AND DARK AIR-CURED TOBACCO FOR PARTIAL EXEMPTION FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT PURSUANT TO SECTION 7 (b) (3) OF SAID ACT

Whereas, applications have been made by the Tobacco Association of the United States and sundry other parties engaged in the buying, handling, stemming, redrying, packing and storing of leaf tobacco of types 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36 and 37 (as defined by the Bureau of Agricultural Economics of the United States Department of Agriculture), pursuant to Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526 of regulations issued thereunder, for partial exemption from the maximum hours provisions of Section 7 (a) of said Act pursuant to the provisions of said Section 7 (b) (3) applicable to industries found by the Administrator of the Wage and Hour Division to be of a seasonal nature, and

Whereas, it appears from said applications that:

(1) the operations of buying, handling, stemming, and redrying, of green leaf tobacco of the types above enumerated and the packing and storing thereof include operations essential to the preservation of a perishable agricultural product, and

(2) the plants of the green leaf tobacco handlers wherein said operations are performed, close at the end of the operating season each year except for maintenance, repair, clerical and sales work, and

(3) the earliest season begins about August first and the latest about January first and that the shortest season is about four weeks and the longest about four months, and

(4) green tobacco, being the materials used by the industry, is available for natural reasons only at the above indicated times of the year when the plants are in operation.

Now, therefore, upon consideration of the facts and reasons stated in said applications, the Administrator hereby determines, pursuant to Section 526.5 (c) of said Regulations, that a *prima facie* case has been shown for the granting of an exemption, pursuant to Section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Section 526.3 of the Regulations issued thereunder, to that branch of the tobacco industry engaged in the

buying, handling, stemming, and redrying of green leaf tobacco of the types set forth in said application and the packing and storing thereof.

In accordance with the procedure set forth in Section 526.5 of the regulations issued under said Act, the Administrator will receive objection to the granting of the exemption and request for hearing from any person interested for fifteen days following the publication in the FEDERAL REGISTER of this preliminary determination. If such objection and request for hearing is received, the Administrator will set the application for hearing before the Administrator or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon said applications. The exemption shall become effective upon the publication of the finding in the FEDERAL REGISTER.

The said applications may be examined at Room 5321, U. S. Department of Labor, Washington, D. C.

Signed at Washington, D. C., this 30th day of December, 1938.

PAUL SIFTON,  
Deputy Administrator.

[F. R. Doc. 38-3929; Filed, December 30, 1938; 10:57 a. m.]

### SECURITIES AND EXCHANGE COMMISSION.

#### United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of December, A. D. 1938.

[File No. 31-127]

IN THE MATTER OF THE APPLICATION OF FRANKLIN T. GRIFFITH, J. C. AINSWORTH AND E. B. MACNAUGHTON, AS VOTING TRUSTEES UNDER THAT VOTING TRUST AGREEMENT DATED NOVEMBER 1, 1932 BETWEEN SAID TRUSTEES AND THE HOLDERS OF SHARES OF THE COMMON STOCK OF THE PACIFIC NORTHWEST PUBLIC SERVICE COMPANY (NOW PORTLAND ELECTRIC POWER COMPANY), FOR EXEMPTION FROM THE PROVISIONS OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

#### ORDER REOPENING HEARING AND NOTICE THEREOF

An application for exemption pursuant to Section 3 (a) (1) of the Public Utility Holding Company Act of 1935 having been duly filed with this Commission by the above-named parties;

A hearing having been held on said application on the 17th day of January, 1936, before Charles S. Lobinger, an officer of the Commission, which hearing was closed on said date; and counsel for

the Commission having moved that such hearing be reopened for the purpose of taking additional testimony and receiving additional evidence;

*It is ordered*, That a hearing on such matter be held on January 16, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered*, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 11, 1939.

The matter concerned herewith is in regard to the application for exemption as a holding company, filed by Franklin T. Griffith, J. C. Ainsworth and E. B. MacNaughton as Voting Trustees under that Voting Trust Agreement dated November 1, 1932 between said Trustees and the holders of shares of the Common Stock of the Pacific Northwest Public Service Company (now Portland Electric Power Company), for exemption from the provisions of the Act pursuant to Section 3 (a) (1) wherein it is alleged that the applicant and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such applicant and every such subsidiary company thereof are organized.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 38-3932; Filed, December 30, 1938;  
11:10 a. m.]

*United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of December, A. D. 1938.

[File No. 31-128]

**IN THE MATTER OF THE APPLICATION OF  
PORTLAND ELECTRIC POWER COMPANY,  
PORTLAND GENERAL ELECTRIC COMPANY**

**ORDER REOPENING HEARING AND NOTICE  
THEREOF**

An application for exemption, pursuant to Section 3 (a) (1) of the Public Utility Holding Company Act of 1935, and pursuant to Section 2 (a) (8) of said Act for an order declaring Seattle Gas Company not to be a subsidiary of Portland General Electric Company, having been duly filed with this Commission by the above-named companies;

A hearing having been held on said application on the 17th day of January, 1936, before Charles S. Lobingier, an officer of the Commission, which hearing was closed on said date; and counsel for the Commission having moved that such hearing be reopened for the purpose of taking additional testimony and receiving additional evidence;

*It is ordered*, That a hearing on such matter be held on January 16, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered*, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 11, 1939.

The matter concerned herewith is in regard to the application for exemption as holding companies filed by Portland Electric Power Company and Portland General Electric Company pursuant to Section 3 (a) (1) of the Act and for an order declaring Seattle Gas Company not to be a subsidiary company of Portland General Electric Company, pursuant to Section 2 (a) (8) of said Act.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 38-3930; Filed, December 30, 1938;  
11:10 a. m.]

*United States of America—Before the Securities and Exchange Commission*

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 29th day of December, A. D. 1938.

[File No. 31-179]

**IN THE MATTER OF THE APPLICATION OF  
FRANKLIN T. GRIFFITH, J. C. AINSWORTH AND E. B. MAC NAUGHTON, TRUSTEES UNDER THAT DECLARATION OF TRUST MADE BY FRANKLIN T. GRIFFITH ON NOVEMBER 26, 1935, IN RE THE HOLDING OF 51,414 SHARES OF THE SECOND PREFERRED STOCK OF THE PORTLAND ELECTRIC POWER COMPANY FOR EXEMPTION FROM THE PROVISIONS OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

**ORDER REOPENING HEARING AND NOTICE  
THEREOF**

An application for exemption pursuant to Section 3 (a) (1) of the Public Utility Holding Company Act of 1935 having been duly filed with this Commission by the above-named parties;

A hearing having been held on said application on the 17th day of January, 1936, before Charles S. Lobingier, an officer of the Commission, which hearing was closed on said date; and counsel for the Commission having moved that such hearing be reopened for the purpose of taking additional testimony and receiving additional evidence;

*It is ordered*, That a hearing on such matter be held on January 16, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

*It is further ordered*, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under Section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before January 11, 1939.

The matter concerned herewith is in regard to the application for exemption as a holding company, filed by Franklin

T. Griffith, J. C. Ainsworth and E. B. MacNaughton, Trustees under that Declaration of Trust made by Franklin T. Griffith on November 26, 1935, in re the holding of 51,414 shares of the Second Preferred Stock of the Portland Electric Power Company for exemption from the provisions of the Act pursuant to Section

3 (a) (1) wherein it is alleged that the applicant and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State

in which such applicant and every such subsidiary company thereof are organized.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,  
*Secretary.*

[F. R. Doc. 38-3931; Filed, December 30, 1938;  
11:10 a. m.]